

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

No. 77-856

PHILLIPS PETROLEUM COMPANY, *Petitioner*,
v.

IRL SHUTTS, as Executor of the Estate of Althea Shutts, Individually, and as representative of all that class of gas royalty owners under Phillips Petroleum Company oil and gas leases in the Hugoton-Anadarko area, *Respondents*.

SUPPLEMENT TO THE PETITION

CLARK M. CLIFFORD
CARSON M. GLASS
ROBERT A. ALTMAN
JOHN G. CALENDER
CLIFFORD, GLASS, McILWAIN
& FINNEY
815 Connecticut Ave.
Washington, D.C. 20006

JOSEPH W. KENNEDY
MORRIS, LAING, EVANS, BROCK
& KENNEDY
Suite 430, 200 West Douglas
Wichita, Kansas 67202

KENNETH HEADY
C. J. ROBERTS
T. L. CUBBAGE II
Phillips Petroleum Company
Bartlesville, Oklahoma 74004

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

—
No. 77-856
—

PHILLIPS PETROLEUM COMPANY, *Petitioner*,

v.

IRL SHUTTS, as Executor of the Estate of Althea Shutts, Individually, and as representative of all that class of gas royalty owners under Phillips Petroleum Company oil and gas leases in the Hugoton-Anadarko area, *Respondents*.

—
SUPPLEMENT TO THE PETITION
—

Pursuant to Rule 24(5) of the Rules of the Supreme Court of the United States, Petitioner Phillips Petroleum Company ("Phillips") submits this supplement to the petition to call attention to an intervening matter not available at the time of the filing of the petition.

On February 1, 1978, the Texas Supreme Court in *Phillips Petroleum Company v. Stahl Petroleum Company*,¹ No. B-6813 (Tex. Sup.) granted Phillips' Ap-

—
¹ The case being reviewed is reported below in *Stahl Petroleum Company v. Phillips Petroleum Company*, 550 S.W. 2d 360 (Tex. Civ. App.—Amarillo, 1977).

plication for Writ of Error for the purpose of reviewing the question of whether the award of interest on additional royalty payments for the period during which the ascertainment of the amount due was delayed by operation of federal law is contrary to Texas Law. (See Letter from Clerk, Texas Supreme Court, Feb. 1, 1978 at App. 1a-2a) The *Stahl* case, like the instant case, arises out of the Hugoton-Anadarko rate making area and the issuance of Federal Power Commission Opinion No. 586.

The Kansas Supreme Court specifically relied on federal cases applying Texas law and on the *Stahl* case in holding against Phillips in the instant case.⁸ The recent granting of the Application for Writ of Error in the *Stahl* case indicates, however, that the law in Texas, upon which the federal decisions are grounded, is by no means settled as respondents argue

⁸ As the Kansas Supreme Court stated:

In passing we also note a long line of federal cases have concluded Texas law permits—and equity requires—the award of interest on suspense royalties under similar circumstances. (*Phillips Petroleum Company v. Adams*, 513 F.2d 355, 365 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed.2d 259, 96 S.Ct. 281; *First Nat. Bank of Borger v. Phillips Petroleum Co.*, 513 F.2d 371 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed. 2d 259, 96 S.Ct. 281; *Phillips Petroleum Co. v. Riverview Gas Compression Company*, 513 F.2d 374 [5th Cir. 1975], cert. denied, 423 U.S. 930, 46 L.Ed.2d 259, 96 S.Ct. 281; *Phillips Petroleum Co. v. Hazlewood*, 534 F.2d 61 [5th Cir. 1976]; *Fuller v. Phillips Petroleum Co.*, 408 F.Supp. 643 [N.D. Tex. 1976]; and *Phillips Petroleum Co. v. Hazlewood*, 409 F. Supp. 1193 [N.D. Tex. 1975].)

In addition, the Texas Civil Court of Appeals recently awarded interest on suspended royalties in *Stahl Petroleum Co. v. Phillips Petroleum Co.*, 550 S.W.2d 360 (Tex. Civ. App. No. 8762, filed April 6, 1977.) This case also arises out of the Hugoton-Anadarko area and the issuance of FPC Opinion No. 586. (Appendix to Petition for Certiorari at 56a)

and as the Kansas Supreme Court believes. Indeed, in two of the cases cited by the Kansas Supreme Court in support of its position, *Phillips Petroleum Company v. Hazlewood*, 534 F.2d 61 (5th Cir. 1976), *pending on motion for rehearing*, No. 76-1290, and *Fuller v. Phillips Petroleum Company*, 408 F. Supp. 643 (N.D. Tex. 1976), *appeal pending*, No. 76-2179 (5th Cir.), the United States Court of Appeals for the Fifth Circuit has stayed further consideration pending resolution of the interest issue by the Texas Supreme Court. (See Letter from Clerk, United States Court of Appeals for Fifth Circuit at App. 3a)

The recent action of the Texas Supreme Court, and the reliance by federal courts and the Kansas Supreme Court on what they may have mistakenly believed to be Texas law, illustrates the need for Supreme Court guidance on the important issue of whether the award of interest for the period when the final payment of additional royalties was delayed by operation of federal law so offends notions of fairness as to be violative of the Due Process Clause.

Respectfully submitted,

CLARK M. CLIFFORD
CARSON M. GLASS
ROBERT A. ALTMAN
JOHN G. CALENDER
CLIFFORD, GLASS, McILWAIN
& FINNEY
815 Connecticut Ave.
Washington, D.C. 20006

JOSEPH W. KENNEDY
MORRIS, LAING, EVANS, BROCK
& KENNEDY
Suite 430, 200 West Douglas
Wichita, Kansas 67202

KENNETH HEADY
C. J. ROBERTS
T. L. CUBBAGE II
Phillips Petroleum Company
Bartlesville, Oklahoma 74004

APPENDIX

APPENDIX

THE SUPREME COURT OF TEXAS

P. O. BOX 12248 CAPITOL STATION
AUSTIN, TEXAS

February 1, 1978

CHIEF JUSTICE	CLERK
JOE R. GREENHILL	GARSON R. JACKSON
JUSTICES	EXEC. ADMINISTRATIVE ASS'T.
ZOLLIE STEAKLEY	WILLIAM L. WILLIS
JACK POPE	ADMINISTRATIVE ASS'T.
SEARS MCGEE	MARY ANN DEFIBAUGH
JAMES G. DENTON	
PRICE DANIEL	
SAM D. JOHNSON	
CHARLES W. BARROW	
T. C. CHADWICK	

Mr. Lloyd Lochridge, Atty
 McGinnis, Lochridge & Kilgore
 Fifth Floor, Texas State Bank Bldg.
 900 Congress Ave
 Austin, Texas 78701

Mr. Kenneth Heady,
 Mr. C. J. Roberts, Attys
 Phillips Petroleum Company
 Corporate Legal Staff
 Bartlesville, Oklahoma 74004

Mr. Jack Ritchie, Atty
 Mr. T. L. Cubbage II, Atty
 Mr. David B. McCall, Atty
 Phillips Petroleum Company
 Corporate Legal Staff
 Amarillo, Texas 79120

2a

Mr. John C. Chambers, Atty
Stone, Stone & Chambers
1701 American National Bank Bldg.
Amarillo, Texas 79101

RE: B-6813: PHILLIPS PETROLEUM COMPANY v. STAHL PETROLEUM COMPANY
Seventh Court of Civil Appeals No. 8762
108th District Court of Potter County No.
55741

Gentlemen:

Today, the Supreme Court of Texas granted the above referenced application for writ of error on points 1, 5 and 8.

This cause has been set for submission and oral argument for Wednesday, February 22, 1978 at 9:00 a.m.

Please indicate on the enclosed form which attorney/s will present oral argument, (see Texas Rules of Civil Procedure No. 498), and return the form to the Clerk's Office at your earliest convenience.

Also enclosed is a cost bill for the petitioner.

Very truly yours,

GARSON R. JACKSON, Clerk
/s/ by MARY M. WAKEFIELD
Mary M. Wakefield, Deputy

Encl: argument form
cost bill-petitioner

3a

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

OFFICE OF THE CLERK

June 13, 1977

EDWARD W. WADSWORTH
CLERK

To ALL COUNSEL OF RECORD

No. 76-1290—Phillips Petroleum Co. vs. Grady Hazlewood; Alstar Production Corp.
No. 76-2144—Phillips Petroleum Co. vs. Riverview Gas Compression Co., Etc., Et Al.
No. 76-2179—R. P. Fuller, Et Al vs. Phillips Petroleum Company.
No. 76-2535—Van Norman Oil Co. vs. Phillips Petroleum Co. vs. American Petrofina Company of Texas.

Dear Counsel:

The Court has asked me to advise you that it will withhold action in the above matters until the adjournment of the Supreme Court of Texas this summer, in hopes that action on the applications for writ of error will by that time have been accomplished.

Very truly yours,

EDWARD W. WADSWORTH
CLERK

/s/ By GILBERT F. GANUCHEAU
Gilbert F. Ganuchean
Chief Deputy Clerk